

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-951661-D1
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: JUAN SEISE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1709

JUAN SEISE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 31 May 1967, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman's documents for three months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a porter on board the United States SS ARGENTINA under authority of the document above described, on or about 2 April 1965, Appellant wrongfully entered a passenger area.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and specification had been proved. The Examiner then served a written order on Appellant suspending all documents issued to him for a period of three months on 12 months' probation.

The entire decision and order was served on 31 May 1967. Appeal was timely filed on 1 June 1967.

FINDINGS OF FACT

On 2 April 1965, Appellant was serving as a porter on board the United States SS ARGENTIA and acting under authority of his document while the ship was at sea.

On this date, as well as other times not here pertinent, there was in effect a posted ship's regulation which reads as follows:

"THE PASSENGER AREAS AND ALL OF THOSE FACILITIES PROVIDED FOR THE PASSENGERS ARE FOR THEIR EXCLUSIVE USE EXCEPT WHEN SPECIAL PERMISSION TO THE CONTRARY HAS BEEN GIVEN BY THE MASTER. NO CREW MEMBER IS TO FREQUENT THESE AREAS UNLESS

ENGAGED IN THE SERVICE OF PASSENGERS OR OTHERWISE EMPLOYED
IN THE VICINITY."

Appellant was aware of this regulation.

At a few minutes after 2:00 p.m. on this date Appellant was on the stairway in the passenger area of the vessel near the ship's theatre, and he was not working.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the specification was not proved on the record.

APPEARANCE: Abraham E. Freedman, by H. Templeton
Fowlkes, Esq. of New York, New York

OPINION

Appellant does not contest the fact that members of the crew, including himself, are not allowed in passenger areas, or that the place in question constituted a prohibitive area within the meaning of the ship's regulation. He does, however, contest that he was ever in this area, as was alleged. In fact, he testified that he was never even on the main deck, where the theatre is located, on the day in question.

On the other hand, a credible witness testified that he observed Appellant immediately outside the ship's theatre holding on to a railing. He was not working, but just "there standing."

The Examiner considered that the eyewitness' testimony was more believable than the accused's testimony and concluded that the specification was proved. This decision on credibility was reasonable and will not be disturbed at this level.

CONCLUSION

The Examiner's finding of misconduct and his order of a short suspension on probation will not be disturbed.

ORDER

The order of the Examiner dated at New York, New York, on 31 May 1967, is AFFIRMED.

W.J. SMITH
Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D.C., this 22nd day of May 1968.

Witnesses

credibility of, judged by Examiner